IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 271 of 1984
in
SPECIAL CIVIL APPLICATION NO 551 OF 1978
WITH
LETTERS PATENT APPEAL NO 455 OF 2003
IN
SPECIAL CIVIL APPLICATION NO 4082 OF 1987

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT
versus
I M PANDYA
(LPA NO 271 OF 1984)

STATE OF GUJARAT
versus
N.D.MAJEETHIA
(LPA NO 455 OF 2003)

Appearance:
1. LETTERS PATENT APPEAL No. 271 of 1984
M/S MG DOSHIT & CO for Appellant No.
GOVERNMENT PLEADER for Appellant No.
MR TUSHAR MEHTA for Respondent No. 1-5

2. LETTERS PATENT APPEAL NO 455 of 2003

MR DAVE, AGP, for Appellant

MR AK CLERK for Respondent

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 10/01/2005

ORAL COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

1. Both these Appeals are disposed of by this common order as they were ordered to be heard together and the result of main LPA No 271/84 would govern the second LPA No.455/03.

2. LPA No 271/84 is filed by the Appellant - State of Gujarat and another against the Judgment and order dated 8.7.1983 passed by the learned Single Judge of this Court, allowing Special Civil Application No.551 of 1978, filed by the respondents - original petitioners, whereby the learned Single Judge directed the respondents present Appellants to re-fix the salaries of all the five original petitioners and give them the same pay scale as given to other Professors who are teaching Engineering (Technical) subjects in the same colleges. The learned Single Judge also directed them to work out difference in salary after fixation and to give pay scale of Rs.1500-2500 from the date on which they had given that pay scale to the other Professors of Engineer subjects (Technical) in the same college.

3. LPA No 455 of 2003 is filed by the Appellant State of Gujarat and another against the Judgment and order dated 8.3.2002, passed by another learned single Judge of this Court in Special Civil Application No.4082 of 1987, whereby the learned Single Judge, following the judgment and order dated 8.7.1983, delivered by another learned Single Judge of this Court in Special Civil Application No.551/98, allowed Special Civil Application No.4082/87, filed by the respondent original petitioner.

4. Having gone through the Judgment and order dated 8.7.1983, passed by the learned Single Judge of this Court in Sp. Civil Application No.551 of 1978, the learned AGP Shri Dave was hardly in a position to challenge the same in LPA No. 271/84 and rightly so in view of the fact that no Affidavit in Reply was even

filed in that petition. That apart, in our considered opinion, the learned Single Judge was right in observing that in the same college engineering subjects cannot be divorced from Physics, Chemistry or Mathematics. Once the learned Single Judge found that there was a discriminatory treatment meted out to the original petitioners - present respondents then, in our considered opinion, the learned Single Judge was right in allowing the petition. In view of this, LPA No.271 of 1984 is required to be dismissed.

5. However, learned AGP Shri Dave for the Appellant in LPA No 455 of 2003 submitted that another learned Single Judge of this Court committed grave error in allowing Special Civil Application No.4082 of 1987, filed by the respondents - original petitioners, on the basis of earlier Judgment of the learned single Judge of this Court, delivered on 8.7.1983 in Sp.Civil Application No.551 of 1978. He submitted that the respondent petitioner of Special Civil Application No.4082 of 1987 had approached this Court after a period of almost 9 years. Therefore, only on the sole ground of gross delay and laches this petition should have been dismissed by the learned Single Judge. However, learned Counsel Shri Clerk for the respondent - original petitioner Shri Majeethia vehemently submitted that delay and laches should not be a ground in this Court to set aside the order passed by the learned Single Judge. He submitted that once almost identical petition, filed by the other Professors of the college, were allowed by the learned Single Judge of this Court then present Appellant should have extended the benefit to the petitioner also without waiting for the orders of the Court. He submitted that being Professor he continued to make representation, but finally he decided to approach this Court in 1987 and finding identical case of the petitioner if another learned Single Judge of this Court had allowed the petition in his favour then such a ground of delay and laches would hardly matter. In support of his submission he places reliance on the Judgments of the Hon'ble Supreme Court viz. (i) in the case of U.P.INCOME-TAX DEPARTMENT CONTINGENT PAID STAFF WELFARE ASSOCIATION v/s. UNION OF INDIA & ORS., reported in AIR 1988 SC 517, and (ii) in the case of U.P.POLLUTION CONTROL BOARD & ORS. v/s. KANORIA INDUSTRIAL LTD. & ANR., reported in (2001) 2 SCC 549.

6. Having heard the learned AGP Shri Dave for the Appellants and Shri Clerk for the respondent - original petitioner in LPA 455/03, we are of the opinion that on facts of this case though there was a delay of about 9

years in approaching this Court the same should not come in the way of the respondent - petitioner when his case was squarely covered in his favour by the Judgment of the learned Single Judge on 8.7.1983 in Special Civil Application No.551 of 1978.

7. Shri Dave, learned AGP, then contended that the learned Single Judge committed an error in allowing the writ petition on the ground that the respondent - petitioner was similarly situated to those Professors whose petition was allowed. He submitted that the present respondent - petitioner was non-technical staff, therefore, benefit of the Judgment of this Court delivered by the learned Single Judge on 8.7.1983 in Special Civil Application No.551 of 1978 should not be extended to him. Having carefully gone through the Judgment of the learned Single Judge delivered on 8.3.2002, we are of the considered opinion that this submission of Shri Dave has no substance. There is nothing on record to show that the respondent - petitioner Shri Majeethia of Special Civil Application No.4082 of 1987 was non-technical staff of the college. In fact, from the Judgment of the learned Single Judge it clearly appears that he was similarly situated to those Professors whose petition was allowed.

8. In view of the above discussion both these Appeals fail and are hereby dismissed. No order as to costs.

(B.J.Shethna, J.)

Date : January 10, 2005

(Sharad D.Dave,J.)

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